

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

THOMAS L. WILLIAMS,

Plaintiff,

v.

STATE OF NEVADA,

Defendant.

3:20-cv-00214-MMD-CLB

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE<sup>1</sup>**

Before the court is Plaintiff Thomas L. Williams's ("Williams"), application to proceed *in forma pauperis* (ECF No. 1), his *pro se* civil rights complaint (ECF No. 1-1), and his motion for appointment of counsel (ECF No. 1-2). For the reasons stated below, the court recommends that Williams's *in forma pauperis* application (ECF No. 1) be granted, his complaint (ECF No. 1-1) be dismissed with prejudice, and his motion for appointment of counsel (ECF No. 1-2) be denied.

**I. *IN FORMA PAUPERIS* APPLICATION**

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial

<sup>1</sup> This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with some  
3 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir.  
4 1981) (quotation marks and citation omitted). A litigant need not "be absolutely destitute to  
5 enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331,  
6 339 (1948).

7 A review of the application to proceed IFP reveals Williams cannot pay the filing fee;  
8 therefore, the court recommends that the application (ECF No. 1) be granted.

## 9 **II. SCREENING STANDARD**

10 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A  
11 provides, in relevant part, that "the court shall dismiss the case at any time if the court  
12 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim  
13 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is  
14 immune from such relief." 28 U.S.C. § 1915A(b). A complaint is frivolous when "it lacks an  
15 arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). This  
16 includes claims based on legal conclusions that are untenable (e.g., claims against  
17 defendants who are immune from suit or claims of infringement of a legal interest which  
18 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,  
19 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th  
20 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same  
21 standard applied in the context of a motion to dismiss under Federal Rule of Civil Procedure  
22 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which requires dismissal  
23 where the complaint fails to "state a claim for relief that is plausible on its face," *Bell Atl.*  
24 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

25 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*  
26 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must  
27 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that

the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The complaint need not contain detailed factual allegations, but must offer more than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal construction may not be used to supply an essential element of the claim not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

### III. SCREENING OF COMPLAINT

In his complaint, Williams sues Defendant State of Nevada under 42 U.S.C. § 1983. (See ECF No. 1-1.) Williams alleges that he was denied entry into Veterans’ Court based on his “failure of drug court” 18 years prior and the denial constitutes discrimination. (*Id.* at 3-6.) Williams does not specify his requested relief. (See *id.* at 9.)

First, the only named Defendant in this case is the State of Nevada. The court recommends dismissal of Defendant State of Nevada, with prejudice, as amendment would be futile. Plaintiff can neither raise 42 U.S.C. § 1983 claims nor state law claims against the State of Nevada based on Eleventh Amendment sovereign immunity. See *Brooks v. Sulphur Springs Valley Elec. Co-op.*, 951 F.2d 1050, 1053 (9th Cir. 1991) (holding that “[t]he Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state” and that “[t]he Eleventh Amendment’s jurisdictional bar covers suits naming state agencies and departments as defendants, and applies whether the relief sought is legal or equitable in nature”); see also *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989) (holding that states are not persons for purposes of § 1983); see NRS § 41.031(3) (stating that the State of Nevada does not waive its Eleventh Amendment

1 immunity). The Ninth Circuit has explicitly held that 28 U.S.C. § 1367, the supplemental  
2 jurisdiction statute, “does not abrogate state sovereign immunity for supplemental state law  
3 claims.” *Stanley v. Trustees of California State Univ.*, 433 F.3d 1129, 1133-34 (9th Cir.  
4 2006).

5 Further, 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their  
6 authority to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*,  
7 451 F.3d 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th  
8 Cir. 2000)). The statute “provides a federal cause of action against any person who, acting  
9 under color of state law, deprives another of his federal rights[,]” *Conn v. Gabbert*, 526 U.S.  
10 286, 290 (1999), and is “merely . . . the procedural device for enforcing substantive  
11 provisions of the Constitution and federal statutes.” *Crompton v. Gates*, 947 F.2d 1418,  
12 1420 (9th Cir. 1991). Claims under § 1983 require the plaintiff to allege (1) the violation of  
13 a federally-protected right by (2) a person or official who acts under the color of state law.  
14 *Anderson*, 451 F.3d at 1067.

15 However, § 1983 is not a backdoor through which a federal court may overturn a  
16 state court conviction or award relief related to the fact or duration of a sentence. Section  
17 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts  
18 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they different  
19 in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir. 2003) (quoting  
20 *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take care to prevent  
21 prisoners from relying on § 1983 to subvert the differing procedural requirements of *habeas*  
22 *corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at 486-87; *Simpson v.*  
23 *Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner challenges the legality or  
24 duration of his custody, raises a constitutional challenge which could entitle him to an earlier  
25 release, or seeks damages for purported deficiencies in his state court criminal case, which  
26 effected a conviction or lengthier sentence, his sole federal remedy is a writ of *habeas*  
27 *corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Heck*, 512 U.S. at 481; *Wolf v.*

1 *McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Simpson*,  
2 528 F.3d at 692-93. Stated differently, where “a judgment in favor of the plaintiff would  
3 necessarily imply the invalidity of his conviction or sentence,” then “the complaint must be  
4 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already  
5 been invalidated.” *Heck*, 512 U.S. at 487.

6 It appears that Williams is challenging his state court criminal conviction and  
7 proceedings. Consequently, he must demonstrate that his conviction has been overturned  
8 to proceed in an action under § 1983. As he has not done so, his sole relief is a *habeas*  
9 *corpus* action.

10 Based on all of the above, the court recommends that the complaint be dismissed,  
11 with prejudice, as amendment would be futile. See *Cato*, 70 F.3d at 1107.

12 Finally, because the court recommends that the complaint be dismissed, with  
13 prejudice, the court recommends the motion for appointment of counsel (ECF No. 1-2) be  
14 denied as moot.

#### 15 **IV. CONCLUSION**

16 For the reasons articulated above, the court recommends that Williams’s application  
17 to proceed *in forma pauperis* (ECF No. 1) be granted, his complaint (ECF No. 1-1) be  
18 dismissed, with prejudice, and his motion for appointment of counsel (ECF No. 1-2) be  
19 denied as moot.

20 The parties are advised:

21 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of  
22 Practice, the parties may file specific written objections to this Report and Recommendation  
23 within fourteen days of receipt. These objections should be entitled “Objections to  
24 Magistrate Judge’s Report and Recommendation” and should be accompanied by points  
25 and authorities for consideration by the District Court.

26 2. This Report and Recommendation is not an appealable order and any notice  
27 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District

1 Court's judgment.

2 **V. RECOMMENDATION**

3 **IT IS THEREFORE RECOMMENDED** that Williams's application to proceed *in forma*  
4 *pauperis* (ECF No. 1) be **GRANTED**;

5 **IT IS FURTHER RECOMMENDED** that the Clerk **FILE** Williams's complaint (ECF  
6 No. 1-1);

7 **IT IS FURTHER RECOMMENDED** that Williams's complaint (ECF No. 1-1) be  
8 **DISMISSED, WITH PREJUDICE**;

9 **IT IS FURTHER RECOMMENDED** that Williams's motion for appointment of counsel  
10 (ECF No. 1-2) be **DENIED** as moot; and,

11 **IT IS FURTHER RECOMMENDED** that the Clerk **ENTER JUDGMENT** accordingly.

12 **DATED:** June 18, 2020.

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14 **UNITED STATES MAGISTRATE JUDGE**  
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